



Sexual Harassment

Stalking Case Could Expand Harassment Protections

By Rich Daly
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A case linking gender violence and workplace stalking is under Supreme Court review and could determine if stalking by a non-employee qualifies as sexual harassment. Advocates say the case also highlights a lack of protection for victims.

WASHINGTON (WOMENSENEWS)--The Supreme Court is slated to give a final review Friday in a case that probes the legal boundaries between stalking and sexual harassment.

Dawn V. Martin v. Howard University, et al., has serious implications for workplace safety nationwide, according to legal advocates, and spotlights the lack of any federal protections for victims of stalking who face retaliation from their employers when they complain about it.

The specific issue raised by the case is whether someone can make a sexual harassment claim against the employer under federal-worker protections if the harasser is not an employee. Martin, an attorney, brought the case after she was stalked by a homeless man while she was working as a law professor at Howard University School of Law in Washington, D.C. Her teaching contract was subsequently not renewed.

The case arises during National Stalking Awareness Month, when advocacy groups will be publicizing data from the Washington-based Stalking Resource Center finding that 1 in 12 women and 1 in 45 men will be stalked during their lifetime. Eighty-seven percent of all stalkers are men, and among stalking victims on campuses, 80 percent know the perpetrator.

The court will consider a petition for rehearing in the case, the last step in the appeals process. It denied a request for a writ of certiorari on Nov. 17. This rarely granted formal request to review a federal appeals court decision is limited to cases where there are "compelling reasons" to review them, according to the court's rules.

Martin, who has represented herself in the case, has claimed the stalking behavior began with a phone message to her office at the school on Nov. 20, 1997, by a man who requested permission to audit a class she had not taught for several years.

A letter slipped under her office door soon after made it clear that the man was seeking inappropriate contact and was focused on making her his wife. This was followed by another letter, three more

phone messages and two visits by the same man, Leonard Harrison, a homeless resident of the area who was previously accused of stalking other female professors, according to court records.

The incoherent communications indicated that Harrison believed Martin was his ideal mate because she bore a physical resemblance to a fictional character in a book, "And We Are Not Saved: The Elusive Quest for Racial Justice," by Derrick Bell.

Asked Employer for Help

When the nature of the contact became clear after the first letter, Martin turned to the law school administration, campus police and the Washington, D.C., Metropolitan Police for help.

Alice Gresham Bullock, the law school dean at the time, failed to make promised safety arrangements for Martin with campus security and the homeless man continued to contact her on campus, according to court filings.

"This was a situation where no one doubted that I was stalked," Martin said. "I was terrified of going to work."

Less than a month after Martin first reported the stalking, the university decided not to renew her two-year teaching contract as it came to an end and she was denied a tenure-track position.

Kerry-Ann Hamilton, media relations manager for Howard University, said the university does not comment on open court cases.

Martin sued the university in federal court for failure to prevent sexual harassment and wrongful termination. A federal jury concluded in April 2006 that Harrison's actions created a "hostile work environment" and that the university failed to take adequate actions to end the workplace harassment.

Expanding Definition of Sex Harassment

Martin and her lawyers hoped the courts would view the workplace stalking as sexual harassment subject to remedies and protections mandated by federal law. At least one other lower court had previously recognized stalking as a severe form of sexual harassment, according to court filings.

However, the jury returned a verdict in favor of the university on the basis that the case did not qualify as sexual harassment, which would have prohibited the employer from retaliating against the employee for reporting the event.

"Such a result leaves women in this jurisdiction with absolutely no remedy at law for being stalked in their workplaces or for being terminated in retaliation for complaining about it," wrote Roberta Wright, in a friend-of-the-court brief supporting Martin's position for the National Association of Women Lawyers, in Chicago.

The association and other supporters of Martin maintain that any stalking based on gender constitutes sexual harassment, and that Harrison targeted Martin because of her gender.

"If she had been male then he wouldn't have stalked her," said Kim Gandy, president of the Washington-based National Organization for Women, which has also filed a friend-of-the-court brief to the Supreme Court.

When Martin pursued the case to the U.S. Court of Appeals for the District of Columbia that court declined to question the jury's conclusion.

"Indeed, the jury reasonably may have concluded that Harrison's stalking was attributable to his misidentification of Ms. Martin as his wife, not bad behavior based on Ms. Martin's gender," the court wrote in its March 2008 decision.

Raises Work Safety Issues

The outcome of the final appeal to the U.S. Supreme Court could affect workplace safety around the nation, according to anti-stalking activists.

The case highlights the increasing problems of both violence against women in the workplace and employment discrimination, Gandy said.

"In this particular case those two issues come together," Gandy said. "I see (the case) potentially having a large impact."

Lower court rulings have left women who are stalked at work without the right to expect protection provided by their employers or protection from employer retaliation. The Martin case is one among a growing number of instances reported to the National Organization for Women of both workplace stalking of women and retaliation by employers after the harassment is reported, said Gandy.

The seriousness of workplace stalking is reflected in research that demonstrates its connection to violence. A 2002 study from the Civic Research Institute in New York found stalking was linked to workplace homicides in as many as 15 percent of such cases.

"Stalking is a clear indicator and warning sign of violence," said Johnny Lee, director of Peace at Work, a nonprofit in Raleigh, N.C., that tracks workplace violence.

A lack of federal protection could encourage stalkers to see the workplace as a safe place to harass their victims, while discouraging women from pursuing protection, said Alexis Moore, founder of Survivors in Action, a nonprofit in El Dorado Hills, Calif., that trains victim advocates. She also works with employers to encourage them to assist stalking victims, even when it might be easier for them to "get rid of the problem" by firing the victim.

Gandy is hopeful that the Supreme Court will take up the matter because it is rare that a victim in a workplace stalking case is able to overcome the job loss, stress and legal hurdles it may cause.

"Most people don't have the resources or the wherewithal to pursue these cases," Gandy said.

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